

ORIGINAL

Air Monitoring Site Agreement

City of Frisco, Texas (hereafter the "Licensor") hereby agrees to permit the Texas Commission on Environmental Quality (hereafter the "Licensee" or the "TCEQ") to locate and operate a continuous air monitoring station on land owned by the Licensor at East side of the road at 7271-7627 South 5th Street Frisco, TX 75034 (the "Property"). In consideration for such permission, the TCEQ shall provide the Licensor full access, via the TCEQ web page, to the monitoring information gathered by TCEQ from the air monitoring station situated at the Property. The term of this Agreement is five years from the date this Agreement is executed, and is renewable for a five-year term thereafter, upon agreement by the TCEQ and the Licensor.

1. Equipment Site Location at the Property ("the Site")

The air monitoring equipment will be located within the Air Monitoring Station Site (the "Site") located on the Property of the Licensor, which is more particularly described in Exhibit "A" which is attached hereto for all purposes.

2. Air Monitoring Equipment

The proposed method of monitoring is with a non-continuous air monitoring system housed in an aluminum housing shelter. The station will be contained within fifty (50) square feet of ground space described herein as the Site. The Site will contain instrumentation as deemed appropriate by the TCEQ as well as peripherals required for the proper operation of the instruments.

3. Provision for Utilities

The TCEQ will arrange and pay for phone and electrical installation and service to the Site.

4. Occupation of the Station

The station will be unmanned, except for routine maintenance visits by TCEQ staff, agents or contractors (except for visits described under Section 5, "Right of Access") occurring approximately twice a week.

5. Right of Access

The TCEQ, its employees, agents, and equipment service contractors will have the right of ingress and egress to and across the Property, during regular working hours, at the direction of the Licensor's staff maintaining or in possession of the Property, subject to the Licensor's property management policies and practices, and not inconsistent with the Licensor's primary use of the Property and other operations incident thereto.

6. Liability and Indemnity

The TCEQ acknowledges that it is not an agent, servant, or employee of the Licensor, and that it is responsible, to the extent provided by law, for its own acts and deeds and for those of its agents, servants or employees during the term of this Agreement. In accordance with the Texas Tort Claims Act, Civ. Rem & Prac. Code ' 101 (Vernon's 2000), the TCEQ will indemnify the Licensor for tort claims arising from the negligent maintenance or operation of the equipment, provided the legislature appropriates funds to satisfy such claims. However, as restricted by the Texas Constitution, any provision in this Agreement creating a debt against the State is void ab initio. Further, in no way does the foregoing declarations waive the State and Licensor's sovereign immunity.

7. Restoration of Property

The TCEQ shall make reasonable repairs and/or replace any property of the Licensor damaged by the TCEQ's operations conducted at the Site, to the extent funds are made available by the Texas Legislature for such purpose. Upon removal, and at the request of the Licensor, the TCEQ shall restore the Site to the condition it was in prior to the installation of the monitoring equipment, to the extent funds are made available by the Texas Legislature for such purpose.

8. Equipment to Remain the Property of the TCEQ

All equipment installed at the Site to support TCEQ's air monitoring operations (whether or not said equipment constitutes a fixture under Texas Property Code) shall remain the property of the TCEQ.

9. Notice of Termination

If the Licensor wishes to terminate this Agreement and reclaim possession and use of the Site, the Licensor shall give the TCEQ 45 days written notice of Termination. Under such circumstances, Licensor shall make a reasonable effort to assist TCEQ in locating an alternative site in the general vicinity, but is under no obligation to provide an alternative site. The TCEQ may also terminate this Agreement upon 30 days written notice to the Licensor.

Notices to be sent to the following addresses:

Texas Commission on Environmental Quality
Contact: _____
12100 Park 35 Circle, Building B
Austin, TX 78753
Office: 512-239-6816
Fax: 512-239-1605

City of Frisco
Contract: City Manager
6101 Frisco Square Blvd.
Frisco, Texas 75034
Office: 972-292-5100

10. Removal of Equipment

Within sixty (60) days of receiving Notice of Termination of this Agreement, the TCEQ shall remove any equipment placed at the Site pursuant to this Agreement.

11. Sovereign Immunity

The Licensor and TCEQ agree that by entering this Agreement, neither party waives its sovereign immunity relating to suit, liability, and the payment of damages. The parties agree that all claims, suits, or obligations arising under or related to this Agreement are subject and limited to the availability of funds appropriated by the Texas legislature and/or the Frisco City Council for that respective claim, suit, or obligation.

12. Severability

The fact that a particular provision is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the Agreement will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision.

13. Venue

This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

14. Consideration

This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

15. Counterparts

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

16. Authority to Execute

The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

17. Representations

Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

18. Entire Agreement

This Agreement constitutes the entire agreement of the parties as to the subject matter contained herein and may not be changed, modified, discharged, or extended except by written instrument duly executed on behalf of the parties.

IN WITNESS WHEREOF, TCEQ and Licensor have signed this Agreement.

Texas Commission on Environmental Quality

By:

(Signature)

David W. Bower, P.G.
(Printed Name)

Field Operations Support Division Director
(Title)

(Date Signed)

Licensor

By:

(Signature)

George Purdy
(Printed Name)

City Manager
(Title)

(Date Signed)

Exhibit "A"
Air Monitoring Station Site (the "Site")

LEGAL DESCRIPTION

Air Monitoring Station (50 square feet)

BEING a tract of land out of the L.H. McNell Survey, Abstract No. 618, City of Frisco, Collin County, Texas, being part of a tract of land described on "Exhibit 4-C" in Agreement, recorded in Clerk's File No. 94-0099426, Deed Records of Collin County, Texas and being more particularly described as follows:

COMMENCING at a 1/2" Iron rod found in the east right-of-way line of Parkwood Boulevard (100-foot wide right-of-way) at the beginning of a curve to the right with a radius of 1000.00 feet, a central angle of 20°09'26", and a chord bearing and distance of North 12°04'23" East, 350.00 feet; said point being the southeast corner of Exhibit 4-A of said Agreement;

THENCE with said east right-of-way line, the following courses and distances:

In a northeasterly direction with said curve, an arc distance of 351.81 feet to the beginning of a reverse curve to the left with a radius of 1100.00 feet, a central angle of 29°02'22", a chord bearing and distance of North 07°37'55" East, 551.57 feet;

In a northeasterly direction with said curve, an arc distance of 557.52 feet to a 1/2" Iron rod found for corner;

North 06°53'16" West, a distance of 186.12 feet to a 1/2" Iron rod found at the beginning of a tangent curve to the left with a radius of 1100.00 feet, a central angle of 44°56'56", and a chord bearing and distance of North 29°21'44" West, 841.00 feet;

In a northwesterly direction, with said curve, an arc distance of 862.96 feet to a point for corner;

North 51°50'12" West, a distance of 53.19 feet to the beginning of a tangent curve to the right with a radius of 800.00 feet, a central angle of 05°52'54", and a chord bearing and distance of North 48°53'46" West, 82.09 feet; said point also being an interior corner of a tract of land described in deed to GNB, Inc. recorded in Clerk's File No. 92-0009197, Deed Records of Collin County, Texas;

In a northwesterly direction, with said curve, an arc distance of 82.12 feet to a point for corner;

THENCE departing said east right-of-way line, South 44°02'42" West, a distance of 3.17 feet to a 5/8" Iron rod with "KHA" cap set for the **POINT OF BEGINNING**;

THENCE South 40°59'29" West, a distance of 5.00 feet to a 5/8" Iron rod with "KHA" cap set for corner;

THENCE North 49°00'31" West, a distance of 10.00 feet to a 5/8" Iron rod with "KHA" cap set for corner;

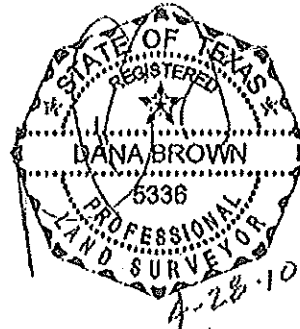
k:\dal_survey\061123022 - parkwood epa survey\survey\docs\air monitoring easement.doc sheet 1 of 4

THENCE North $40^{\circ}59'29''$ East, a distance of 5.00 feet to a 5/8" Iron rod with "KHA" cap set for corner;

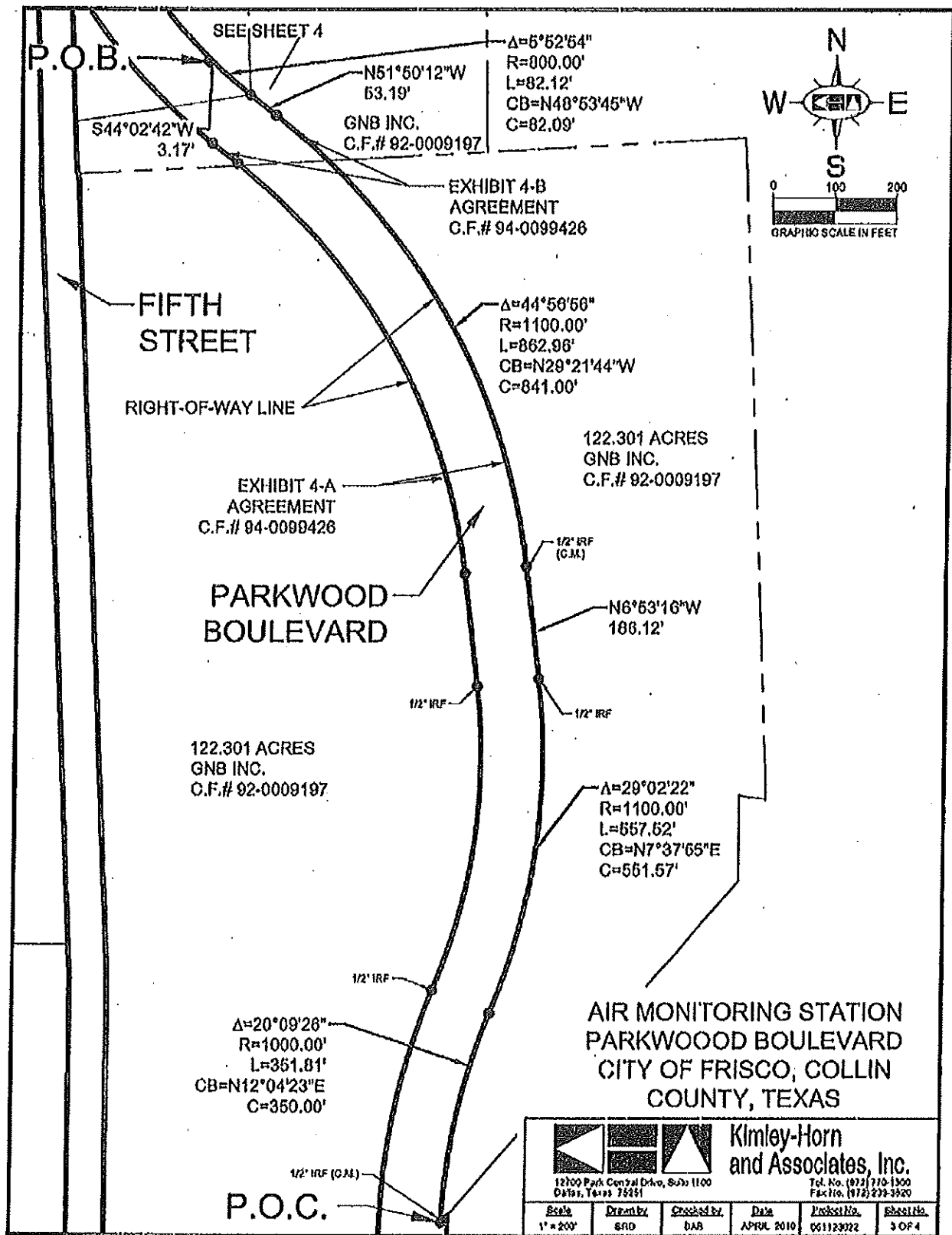
THENCE South $49^{\circ}00'31''$ East, a distance of 10.00 feet to the **POINT OF BEGINNING** and containing 0.001 acres or 50 square feet of land.

Bearing system of this survey is based on a line oriented between City of Frisco monuments 1 and 7 found in the field, whose positions are published on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone 4202.

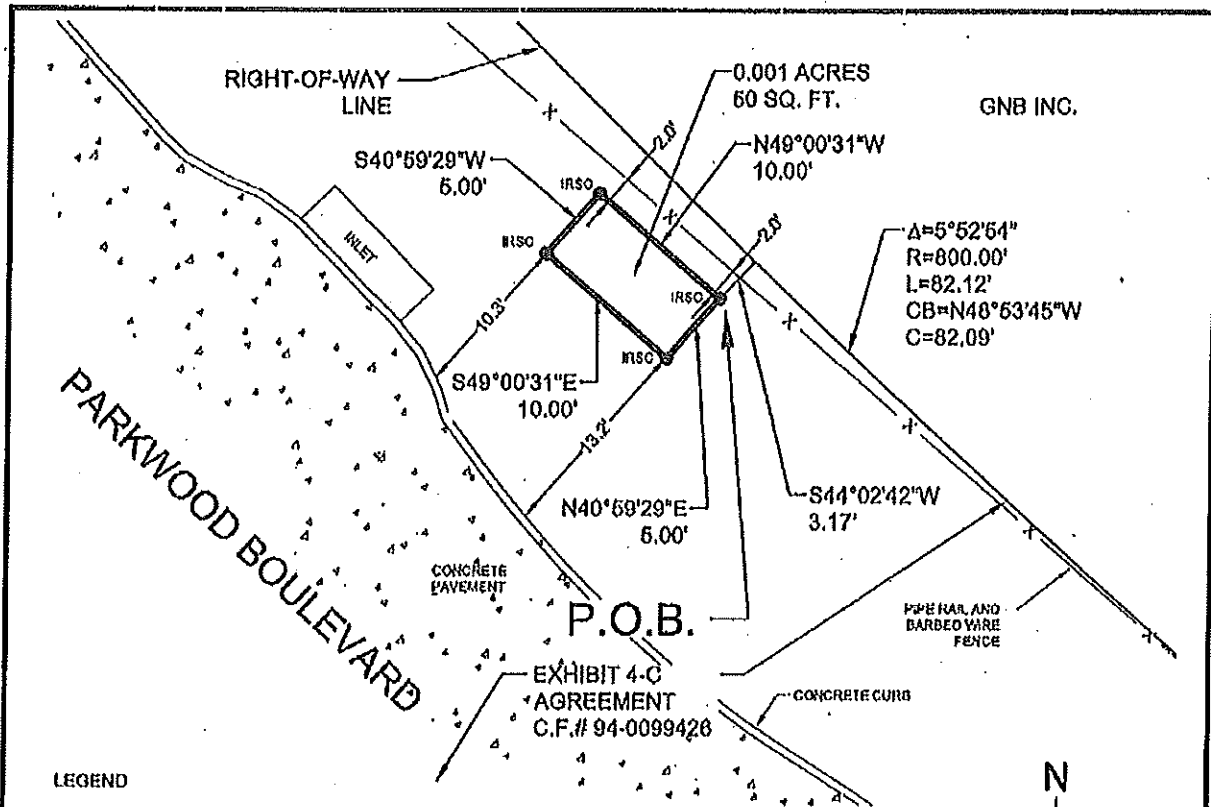
Dana Brown
Registered Professional Land Surveyor No. 5335
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75261-1516



k:\dal_survey\061123022 - parkwood epa survey\survey\docs\air monitoring easement.doc sheet 2 of 4



PLOTTED BY DUNN, STACY 4/23/2010 10:53 AM DWG NAME K:\04L_SURVEY\081123022 - PARKWOOD EPA SURVEY\DWG\BASE\081123022 - PARKWOOD EPA BOUNDARY.DWG LAST

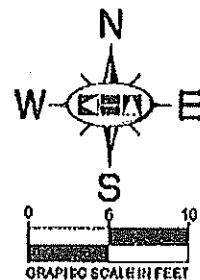


LEGEND

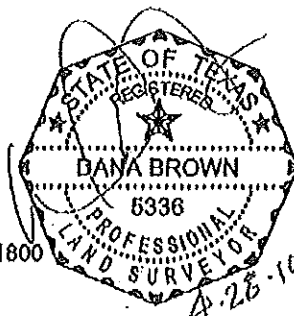
IRSC = 5/8" IRON ROD WITH "KHA" CAP SET
 C.M. = CONTROLLING MONUMENT

NOTES

Bearing system of this survey is based on a line oriented between City of Frisco monuments 1 and 7 found in the field, whose positions are published on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone 4202.



Dana Brown
 Registered Professional
 Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive Suite 1800
 Dallas, Texas 75261
 Ph. 972-770-1300



AIR MONITORING STATION
 PARKWOOD BOULEVARD
 CITY OF FRISCO, COLLIN
 COUNTY, TEXAS

		Kimley-Horn and Associates, Inc.	
12700 Park Central Drive, Suite 1800 Dallas, Texas 75261		Tel. No. (972) 770-1300 Fax No. (972) 239-3920	
Scale 1" = 10'	Drawn by SRD	Checked by DAB	Date APRIL 2010 Project No. 051123022 Sheet No. 4 OF 4

PLOTTED BY DURN, STACY 4/28/2010 10:51 AM DWG NAME KNDAL_SURVEY051123022 - PARKWOOD EPA SURVEY051123022 - PARKWOOD EPA BOUNDARY.DWG LAST